

Local Union No. 2592, Lumber and Sawmill Workers Union, AFL-CIO and Louisiana-Pacific Corporation and Westfall Stevedore Company and International Longshoremen's and Warehousemen's Union, Local No. 14. Case 20-CD-604

24 October 1983

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act following a charge filed by Louisiana-Pacific Corporation (LP), alleging that Local Union No. 2592, Lumber and Sawmill Workers Union, AFL-CIO (LSW), has violated Section 8(b)(4)(D) of the Act.

Pursuant to notice, a hearing was held before Timothy Wong Peck on 9 and 10 December 1982. LP and LSW as well as the parties in interest, namely, International Longshoremen's and Warehousemen's Union, Local No. 14 (ILWU), and Westfall Stevedore Company (Westfall) appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, all the parties filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the rulings of the hearing officer made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed. On the entire record in this proceeding, the Board makes the following findings.

1. THE BUSINESS OF LP AND WESTFALL

The parties stipulated, and we find, that LP is a Delaware corporation engaged in the production of timber and wood-related products, that it has facilities in at least 25 States, and that during the 12 months preceding the hearing it shipped from its facility in Samoa, California, goods valued in excess of \$50,000 to customers located outside California.

The parties also stipulated, and we find, that Westfall is a California corporation located in Eureka, California, that it is engaged in stevedoring, and that during the 12 months preceding the hearing it performed services valued in excess of \$50,000 for steamship lines which meet the direct jurisdictional standards of the National Labor Relations Board.

Accordingly, we find that LP and Westfall are engaged in commerce within the meaning of the Act, that and it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that LSW and ILWU are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. Background and Facts of the Dispute

LP owns and operates a thousand-acre complex on the Samoa, California, peninsula at Humboldt Bay. It includes, inter alia, warehouses, an equipment and maintenance shop, a sawmill, and a redwood dock which is about 1250 feet long and about 250 feet wide. These facilities are staffed by LSW-represented employees pursuant to a series of collective-bargaining agreements with LP and its predecessors.

A number of different products such as lumber, logs, pulp, and plywood are moved across the redwood dock for loading on ships. Approximately 75 percent of these commodities are produced by LP. The remaining 25 percent consists of non-LP products the movements of which is the subject of dispute.¹

Certain employees of LP not only handle its own products but also perform the following functions with respect to non-LP material: (1) unloading the trucks or railcars which arrive at the Samoa complex, (2) sorting logs and plywood by size, grade, and species, (3) trimming and cutting the logs, (4) wrapping and packaging the logs, (5) operating forklifts to move (a) some products such as green lumber directly from the warehouse or the yard to a location underneath the ship's tackle² and (b) other products such as dry lumber and pulp to a staging area within 250 feet of the ship and thereafter to a point below the tackle.³

LP's control and responsibility for the non-LP material ends when it is placed below the ship's tackle. The responsibility for this material then shifts to Westfall which employs longshoremen represented by ILWU to operate the tackle and load the cargo on and into the ship.⁴

¹ The movement of goods across the dock is also referred to as terminal work.

² The function of the tackle is to lift the cargo from the dock onto the ship.

³ When there are unexpected delays, LP then temporarily assigns its employees to work in the mill or the yard.

⁴ The services performed by LP and Westfall are secured by a broker or steamship agent acting on behalf of non-LP companies.

On two occasions, in May and June 1982, the ILWU, which is a party to an agreement with the Pacific Maritime Association (PMA), claimed that the employees of Westfall, a member of PMA, should also be assigned to move non-LP material from the last point of rest, i.e., the storage or staging area, to the tackle of the ships waiting to be loaded. Westfall asserted that it had no authority to assign the work and LP, which was not a party to the PMA agreement, refused to accede to the claims. An arbitrator, selected pursuant to the terms of the PMA agreement, decided the first claim in favor of the ILWU on the ground that the steamship agent had control of the cargo prior to loading onto the ship. The arbitrator held that the second claim was not warranted because the steamship agent involved was not a PMA member. Both awards were appealed to a PMA committee which ruled on 22 October 1982 that Westfall's employees were entitled to the non-LP work in question under the terms of the PMA agreement that covered cargo in which the dock operator does not have a "proprietary" interest. Westfall paid the two "last work opportunity" claims of the ILWU but has refused to do so with respect to subsequent claims.

In late October or early November 1982, LP official Loran G. August telephoned LSW's business agent, Walter A. Newman, about the "problem" LP was having with the ILWU. When August asked what would happen if LP "gave the work to the ILWU," Newman replied that LSW would strike.

B. The Work in Dispute

The work in dispute involves the movement of non-LP material from the warehouse or the staging area on the redwood dock to a location below the tackle of the ship which is to be loaded.

C. Contentions of the Parties

LP contends that the work in dispute should be awarded to its LSW-represented employees on the basis of longstanding and traditional practice pursuant to its existing and past collective-bargaining agreements with LSW, efficiency and economy of operations, and LP preference.

The ILWU contends that under the terms of its collective-bargaining contract with PMA the disputed work should be awarded to the Westfall employees which it represents.

The ILWU also contends that the present proceeding is not a jurisdictional dispute within the meaning of Section 10(k) or Section 8(b)(4)(D) of the Act because it is seeking to preserve work that it argues would have been performed by another

local of ILWU had it not been diverted to LP's redwood dock from LP's competitors in Coos Bay, Oregon. The ILWU therefore moves for a Board order quashing the notice of hearing in this case.

D. Applicability of the Statute

Before the Board may proceed with the determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that (1) there is a reasonable cause to believe that Section 8(b)(4)(D) has been violated and (2) the parties have not agreed upon the method for the voluntary adjustment of the dispute.

It is clear from the foregoing that LSW threatened to strike if LP complied with ILWU's demand that it assigned the disputed work to Westfall's employees.

As indicated above, ILWU contends that its purpose in pressing its claim was to reserve the work of another ILWU local which it asserts was diverted from other dock operators in Coos Bay, Oregon, to LP's redwood dock. We find this contention to be without merit as it is evident that ILWU's objective was not to avoid the loss of work at the redwood dock but to gain work which it had not previously performed.⁵

In view of the conduct described above and in the absence of a valid work preservation objective on ILWU's part, we find that there is a reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred.⁶ As there is no contention that an agreed-upon method exists for the voluntary adjustment of the dispute to which all parties are bound, we find that the dispute is properly before the Board for determination under Section 10(k) of the Act.

E. Merits of the Dispute

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.⁷ The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience reached by balancing those factors involved in a particular case.⁸

The following factors are relevant in making the determination of the dispute before us.

⁵ Accordingly, we hereby deny the ILWU's motion to quash the notice of hearing.

⁶ See *Laborers Local 116 (E. S. Masonry, Inc.)*, 187 NLRB 482 (1980), wherein the Board held that employers may invoke the Board's processes even when the alleged unlawful conduct is engaged in by the group which is already performing the disputed work.

⁷ *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting System)*, 364 U.S. 573 (1961).

⁸ *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

1. Board certification

There are no known certifications covering either the LP employees who perform the disputed work or the Westfall employees who claim it.

2. Collective-bargaining agreements

Pursuant to a series of collective-bargaining agreements, it is LP's longstanding and traditional practice to assign to its LSW-represented employees the movement of both LP and non-LP material across its redwood dock.

LP has no contract with ILWU.

3. Employer preference

LP prefers that the disputed work be awarded to its LSW-represented employees in accordance with its past and present practice.

4. Industry and area practice

As indicated above, LP utilizes at its redwood Humboldt Bay dock LSW-represented employees to do terminal work up to the point below the ship's tackle.⁹ The terminal work at the other docks in Humboldt Bay is performed by employees who have no affiliation with the ILWU. At Coos Bay, Oregon, the port nearest to LP's redwood dock, the terminal work at five of the eight docks in that area is performed by employees represented by LSW or the International Woodworkers of America. Although ILWU members perform terminal work at the remaining Coos Bay docks, two of them are "commercial" docks which, unlike LP, have no manufacturing operation of their own and only handle nonproprietary material.

5. Relative skills

The record shows that LP's LSW-represented employees are experienced in processing and handling LP and non-LP lumber and other material. They are also skilled in operating LP's large 10-ton forklifts which are used to convey such loads across the redwood dock.

Westfall's ILWU-represented employees operate considerably smaller forklifts but only on board the

ship which is being loaded. In contrast to LP's employees, the ILWU members who work for Westfall have little of the knowledge as to lumber grades and sizes that is helpful in loading material on LP's larger forklifts. Such formal training as ILWU members employed by Westfall have received at other locations in operating forklifts to move goods across docks was limited to a period in 1967.

6. Economy and efficiency of operations

As indicated above, LP's experienced and skilled employees represented by LSW not only perform the disputed terminal work but also perform related processing functions, and LP makes alternative use of those employees by temporarily assigning them to other tasks whenever there is some delay. Granting ILWU's claim would result in the fragmentation of LP's work force and give LP less flexibility in the use thereof. Accordingly, we find that it is more economical and efficient to continue LP's practice of assigning the disputed work to its LSW-represented employees.

Conclusion

On the record as a whole, and after consideration of all relevant factors involved, we conclude that the LSW-represented employees of LP are entitled to perform the work in dispute. We reach this conclusion particularly in view of LP's assignment and preference, established practice pursuant to a series of collective-bargaining agreements of LSW and LP, the relative skills and experience of the disputants, and economy and efficiency of LP's system of operation.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Louisiana-Pacific Corporation are entitled to perform the disputed terminal work involving the movement of material, which is not produced or owned by that Company, across the latter's redwood dock at Samoa, California, to a point below the tackle of the ship to be loaded.

2. International Longshoremen's and Warehousemen's Union, Local No. 14, is not entitled to perform the disputed work.

⁹ LP also has a dock on the Eureka, California side of Humboldt Bay which employed LSW members to handle non-LP lumber until about 1979 when it decided to no longer operate the dock for that purpose.